

OCT 17 1979

MICHAEL KODAK, JR. CLERK

In The
Supreme Court of the United States

..... TERM, 1979

No. **79-634**

JOHN R. QUINZIO,

Petitioner,

- v -

PART I — Quinzio vs Donald W. Miller, et al, including Arthur R. Cramer, Attorney Driscoll, Mathews, Gingold and Cass, 913 University Bldg., Syracuse, N.Y. 13202, (315) 471-2188; (Index No. 76-4154)

PART II — Quinzio vs Donald W. Miller, et al, including Pine Tree Builders Inc., Attorney A. R. & R. L. Cramer, 809 University Bldg., Syracuse, N.Y. 13202, (315) 474-1285; (Index No. 76-4154)

PART (#deleted judge) — Quinzio vs Town of Clay, et al, including Town of Clay, Town Officers, 1970 to present, Town Attorneys, 1970 to present (includes Hancock, etc.), Attorney Hancock, Estabrook, Ryan, Shove & Hust, One Mony Plaza, Syracuse, N.Y. 13202, (315) 471-3151; (Index No. 76-3671)

PART IV — Quinzio vs Town of Clay, et al, including Calocerinos & Spina, Town Engineers, 1970 to present, Attorney O'Hara, O'Hara & Vars, 1020 Seventh North St., Liverpool, N.Y. 13088, (315) 451-3810; (Index No. 76-3671)

PART V — Quinzio vs Town of Clay, et al, including Mr. & Mrs. Robert C. Behnke, Mr. & Mrs. Donald Ward, Mr. & Mrs. John J. McDonald, Attorney Alvie Kinch, 316 State Tower Bldg., Syracuse, N.Y. 13202, (315) 476-2171; (Index No. 76-3671)

PART VI — Quinzio vs Town of Clay, et al, including Mr. & Mrs. John Depasquale, Mr. & Mrs. Robert B. Forrester, Attorney Bond, Schoeneck & King, One Lincoln Center, Syracuse, N.Y. 13202, (315) 422-0121; (Index No. 76-3671)

Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE ~~SUPREME COURT~~
~~OF THE UNITED STATES~~

JOHN R. QUINZIO, *Pro Se*
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Appellees.

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE UNITED STATES**

To the Supreme Court of the United States.

John R. Quinzio, the petitioner herein, prays that a *Writ of Certiorari* issue to review the five judgments of the Appellate

Division, Fourth Department of New York State entered in the above entitled case on September 29, 1978.

No opinions or memoranda were issued.

JURISDICTION

Jurisdiction of Supreme Court is invoked under Rule 19 of Rules of Supreme Court;

1 "Where there are special and important reasons therefor".

b "Has decided an important State question in a way in conflict with applicable State Law."

"Or has so far departed from the accepted and usual course of Judicial proceedings or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

QUESTIONS PRESENTED

Can the Supreme Court of Onondaga County ignore the laws of the State of New York with impunity; by ignoring Plaintiff's right to be heard at motion hearings and present his case, by completely disregarding the laws substantiating Plaintiff's case and by either issuing no memorandum or by presenting arguments which Plaintiff could have refuted had he been heard or questioned?

Can Plaintiff's constitutional rights under the State of New York or the United States be violated at will in the hope that the time and expense in continuing the case will discourage him?

STATUTES INVOLVED

New York State Civil Practice Laws and Regulations

Sec. 199 Town Law

Sec. 266 Real Property Law, note 2

Sec. 291 Real Property Law

New York State Civil Practice Laws and Regulations (cont'd.)

Sec. 67 note 6 Town Law

Sec. 50e note 14 General Municipal Law

Sec. 213, C213:9 Limitations of time

Sec. 103, note 11, Civil Judicial Proceedings

Sec. 3013:3 Pleadings

Sec. 3013, C3013-6 and C3013-7, Pleadings

Sec. 3212 b Accelerated Judgement

Sec. 3212, C3212:6, Accelerated Judgement

Sec. 5501, Appeals Generally, note 94

New York Jurisprudence

36 NY Jur. Sec. 63, page 13

59 NY Jur. Sec. 1

59 NY Jur. Sec. 18

59 NY Jur. Sec. 33

New York State Constitution

Bill of Rights

Art. I Section 1

Art. I Section 2

Art. I Section 7a, notes 54, 104, 109, 132, 137, and
134 Cum Pock Part 1978-1979

Art. I Section 11, note 4, 11.

United States Constitution

Amendment V

Amendment VII

Amendment IX

STATEMENT OF CASE

1. Plaintiff was being transferred from Buffalo office to Syracuse on September 6, 1970. On May 20, 1970, Plaintiff signed a contract to build a house in Northtown Park on lot 63 per Town of Clay Grading Plan Drawing 204002, with Donald Miller, a builder who advertised in the Herald Journal, a Syracuse paper. Drawing 204002 was prepared by Calocerinos, a defendant and Town Engineer in this case who had full knowledge of the Grading Plan. Unknown to Plaintiff, Miller did not own the land but he was to arrange for its payment by the bank or otherwise at closing and directly to the developer, Pine Tree Builders, Inc. Miller never paid a cent for the lot and the deed made out to Miller was held in escrow until a check was received by the developer on September 1, 1970 from Plaintiff's account by bank, not from Miller. Plaintiff closed on August 31, 1970 with Miller on which date Miller, unknown to Plaintiff, still did not own the land. Thus Miller was Pine Tree's agent and Pine Tree and its secretary Arthur Cramer were bound to Plaintiff's contract as they benefited and accepted the fruits of Miller's actions. A SOLD sign was placed on the lot on May 21, 1970, one day after the sale which was standard practice for the Realtor Ferris. The SOLD sign was constructive notice that the lot was sold and a house would be erected.

2. Northtown Park Drainage District is on a benefit basis and any additions came under Town Law Sec. 199 requiring a petition, hearing, order by Town Board, etc. Contract with Miller expressly forbade any new encumbrances or drainage structures, with the land to slope down toward the rear of the lot (the natural contour of the land) and onto Boxford Road lots per official Town of Clay Grading Plan.

3. Sometime after the house was being built, some Boxford owners, the Town attorney, and the Town engineer met with Miller at the rear of lot 63 and they conspired to secretly install a lateral with manhole on Plaintiff's lot and drain all area waters on Plaintiff's lot, knowing Plaintiff had the lot under contract as the builder was present at the meeting.

4. An easement, 1016-1017-1018, was granted by Arthur Cramer to Town of Clay and filed July 2, 1970 in violation of contract and a lateral was installed in violation of Town Law Sec. 199 without Plaintiff's knowledge. No record of this lateral exists in any town records or minutes of board meetings, no order was issued for its design and installation, it was never accepted by the board and no record exists of what funds were used to pay for it. Mounds of dirt at the rear of the lot hid the manhole at closing, as area grading was not complete. The lot was a mass of mud through the winter of 70-71 and in the spring, Plaintiff bought a tractor and retilled the entire lot after filling in badly settled holes, to plant grass and get rid of mud. Plaintiff went to the hospital in the winter of 70-71 and again in the winter of 71-72 and could take no action on the ditch and manhole left by builder.

5. In 1973, Plaintiff retained O'Hara, O'Hara and Vars (now defendant Town Engineers) to fight the easement and drain. After approximately four months, about December, the case was taken away from O'Hara for lack of prosecution and stalling. All evidence was dug up by Plaintiff and none by the attorneys. O'Hara tried to get Plaintiff to accept a new pipeline which was supposed to solve the water problems but in fact would have aggravated them and in addition Plaintiff would have been tricked into accepting the easement and forever lost the right to recover and Plaintiff refused.

6. The case was then given to Melvin and Melvin in 1974. They also stalled and tried to trick Plaintiff into accepting a pipeline and this was rejected for the same reasons. This firm was retained by Pine Tree and was active in the formation of the original district and knew the Town acted illegally.

7. Again in 1974 Plaintiff retained Carl Dengel to prosecute the case. He also tried to get Plaintiff to accept a pipeline and this was also rejected.

8. Later in 1974, Plaintiff retained Ross Cellino of Buffalo to fight this case. He said he would only sue the builder and his attorney Wood as he was too far removed from Syracuse to

get involved in the total case. He also tried to get Plaintiff to accept a pipeline per the same drawings prepared by Calocerinos & Spina as the others, and again Plaintiff refused for the same reasons as this was a trick to gain acceptance of the easement. Plaintiff took the case away from him in late 1975 and was forced to prosecute it himself after failing to find any attorneys who would fight the case and they frankly told Plaintiff they could not fight that machine.

9. A Summons and Complaint was served on Parts I and II within six years statute of limitations, even though the continuing wrong voided the statute on time and Notice of Claim (also improper and illegal actions of Town Board also voided the statute).

10. A Notice of Claim was filed against Parts III, IV, V and VI on June 1, 1976 and Summons & Complaint was served July 1, 1976, all within the six years statute of limitations on causes of actions, even though the statutes were voided for causes and Notice of Claim by the continuing wrong and illegal actions of the Town Board, and Town Officers.

11. All conspirators or participants in illegal acts or wrongs are equally liable for the acts of the others both before and after joining the conspiracy. Plaintiff was pleading in the alternative per CPLR 3014 Remedies and Pleadings, C3014:7 and the burden is on the defendants to come forth with exonerating proof.

12. Pine Tree Builders and its secretary Arthur Cramer filed a covenant on Plaintiff's lot, section B, unknown to Plaintiff in November, 1970, three months after closing and the covenant is a forgery as Pine Tree did not own the lot.

13. Pine Tree ordered a search for Donald Miller, the builder, but Miller did not order a search for Plaintiff. He merely passed his search (which he did not need as he never paid for the lot) onto Plaintiff's lawyer and Plaintiff was not warned of easement by Title and Guaranty Co. as required by 1 NY Jur. Section 6. On settling the record, attorneys for Pine

Tree and Arthur Cramer insisted on entering excerpts from the search into the record and Judge Aronson granted same even though the copies submitted were never served on Plaintiff, were entered into County records three days after the motion hearing and the cover sheet was forged with Plaintiff's name typed and not builder's name.

14. A covenant existed on Boxford Road lots, Section A, since 1965 and this reserved the rear of all lots on that side for a drainage facility. No covenant existed on Section B, on Plaintiff's lot on Topsfield Lane at date of contract or at closing.

15. A Boxford side defendant is on the nominating committee of the Republican party who controlled the Town of Clay and Onondaga County.

16. In Part III, Town of Clay, et al, Town attorneys Hancock, Estabrook, Ryan, Shove and Hust who defended the Town of Clay, Town Board and prior Town attorneys are themselves defendants through Robert Smalls' actions in trying to entrap Plaintiff. Judge Lynch dismissed the complaint in violation of State Law, Appeals Generally, Section 5501, note 94, which bars dismissal of complaint before the answers are filed and even granted a judgement for costs.

17. Defendants have individually and collectively conspired to injure Plaintiff and his property by flooding his land with every rain and snowmelt plus Boxford side swimming pool water and rendering his property unfit for resale.

18. Plaintiff has given sufficient legal causes of action per CPLR C3013:7. Pleadings to warrant a trial by jury to decide the issues, and complaints were dismissed illegally by the judges. All judges involved have completely disregarded Plaintiff's rights under the Laws of the State of New York and Constitutions of the State of New York and the United States.

19. Judge Aronson forced Plaintiff to file an amended complaint when the original complaint complied entirely with New

York State Law and he took out of the original complaint all items detrimental to Hancock, Estabrook, Ryan, Shove and Hust that their attorney at the motion hearing asked for, over the objections of Plaintiff who was not allowed to argue and was silenced. Plaintiff had an amended complaint prepared by a Buffalo law firm and it was this complaint that was dismissed in parts I to VI.

20. CPLR Section 266 Real Property Law, Note 1, impeaches and renders absolutely void title to a conveyance (easement) when Grantee (Town of Clay) knows of fraudulent intent of immediate Grantor (Pine Tree and Arthur Cramer). All defendants knew of fraudulent intent and conspired in the act.

21. CPLR Section 291 Real Property Law voids any conveyance not made in good fath and for a valuable consideration. No consideration was paid and it was not made in good faith, but to take Plaintiff's land secretly with intent to defraud him of his land and without due process of law, Section 199 CPLR Town Law.

22. Plaintiff was deprived of his Constitutional rights of due process of law guaranteed under Amendments IV and V of the United States Constitution and Article 1, Section 7(a), notes 54, 104, 109, 132, 137 and 268 of the New York State Constitution.

23. Plaintiff was denied equal protection of laws as guaranteed by the New York State Constitution, Bill of Rights, Article 1, Section 11, note 4, both under protection of Section 199 of Town Law and Section 5501 Appeals Generally, note 94.

24. Per CPLR Civil Judicial Proceedings Note 11 "where a statute commands or prohibits a thing, person injured by another's failure to do the thing commanded or by his doing the thing prohibited has a cause of action against the violator of statute for ensuing damage * * *."

ORIGINAL RECORD

Please permit this case to be heard on the original records and briefs and all other correspondence on file at the Appellate Division, Fourth Department in Rochester, New York.

Therefore, Plaintiff begs the Supreme Court to grant this Petition for Writ of Certiorari and reverse the order of the Supreme Court of Onondaga County dismissing the complaints and of the Appellate Division sustaining the dismissals.

If it is within the court's jurisdiction, the following further relief is requested:

- a. Void easement 1016-1017-1018.
- b. Void covenant on Section B.
- c. Order Town of Clay to fill in ditch and manhole and regrade Plaintiff's lot per Town of Clay Grading Plan, draining waters onto Boxford lots.
- d. Grant a permanent injunction against the Town of Clay preventing any further flooding of Plaintiff's land.
- e. Order Town of Clay, Town Officers and Town Attorneys to file answers to original complaint.
- f. Void amended complaint which was illegally ordered by Judge Aronson to protect Town attorneys, and for which there was no just reason under law. Parts IV, V and VI did not contest the original complaint.
- g. Bar further delays in letting this case go to trial.

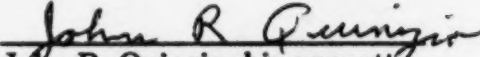
ORAL ARGUMENTS

Plaintiff will appear for oral arguments and will answer any questions asked of him, under oath or otherwise as Justice chooses.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,


John R. Quinzio, his own atty.
5458 Topsfield Lane East
Clay, New York 13041
(315) 699-0892

August 31, 1979

APPENDIX

**APPENDIX — Five Orders of the Appellate Division,
Fourth Department.**

76-4154

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**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department**

**PRESENT: MARSH, P.J., CARDAMONE, SIMONS
DILLON, SCHNEPP, JJ.**

John R. Quinzio, Appellant,

v.

Donald W. Miller, d/b/a Miller Homes, Philip Wood, Defendants,
Arthur Cramer, Secretary for Pine Tree Builders, Inc., and
Pine Tree Builders, Inc., Respondents.

Appeal No. 1

The above named John R. Quinzio, plaintiff in this action, having appealed to this Court from an order of the Supreme Court, entered in the Onondaga County Clerk's office on August 23, 1976 and said appeal having been argued by John Quinzio appellant, Dan Mathews of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the order so appealed from be, and the same hereby is unanimously affirmed without costs.

Entered: September 29, 1978

MARY F. ZOLLER, *Clerk*

*APPENDIX — Five Orders of the Appellate Division,
Fourth Department.*

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SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

PRESENT: MARSH, P.J., CARDAMONE, SIMONS
DILLON, SCHNEPP, JJ.

John R. Quinzio, Appellant,

v.

Town of Clay, Earl Butterfield, et al., constituting the 1970 Town Board of Clay; Ronald V. Sharpe, 1970 Town of Clay Attorney; Loxley Firth, et al., constituting the 1973-75 Town Board of Clay; Robert A. Small, 1973-75 Town of Clay Attorney, Respondents, and others, Defendants.

Appeal No. 4

The above named John R. Quinzio, plaintiff in this action, having appealed to this Court from an order of the Supreme Court, entered in the Onondaga County Clerk's office on November 5, 1976 and said appeal having been argued by John Quinzio appellant, John Cherundolo of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the order so appealed from be, and the same hereby is unanimously affirmed without costs.

Entered: September 29, 1978

MARY F. ZOLLER, *Clerk*

*APPENDIX — Five Orders of the Appellate Division,
Fourth Department.*

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

PRESENT: MARSH, P.J., CARDAMONE, SIMONS
DILLON, SCHNEPP, JJ.

John R. Quinzio, Appellant,

v.

Calocerinos and Spina, 1970, 1970-75 Town of Clay Engineers,
Respondents,
Town of Clay, et al., Defendants.

Appeal No. 5

The above named John R. Quinzio, plaintiff in this action, having appealed to this Court from an amended order of the Supreme Court, entered in the Onondaga County Clerk's office on March 9, 1977 and said appeal having been argued by John Quinzio of counsel for appellant, Marc Reitz of counsel for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the order so appealed from be, and the same hereby is unanimously affirmed without costs.

Entered: September 29, 1978

s/ MARY F. ZOLLER
MARY F. ZOLLER, *Clerk*

*APPENDIX — Five Orders of the Appellate Division,
Fourth Department.*

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**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department**

**PRESENT: MARSH, P.J., CARDAMONE, SIMONS
DILLON, SCHNEPP, JJ.**

John R. Quinzio, Appellant,

v.

Mr. and Mrs. Robert B. Forrester, Mr. and Mrs. Robert C.
Behnke, Mr. and Mrs. Donald Ward and Mr. and Mrs. John J.
McDonald, Respondents,
Town of Clay, et al., Defendants.

Appeal No. 2

The above named John R. Quinzio, plaintiff in this action,
having appealed to this Court from an order of the Supreme
Court, entered in the Onondaga County Clerk's office on Octo-
ber 4, 1976 and said appeal having been argued by John
Quinzio appellant, and submitted by Thomas Meyers of counsel
for respondents Forrester Alvie Kinch of counsel for respond-
ents, Behnke, Ward and McDonald and due deliberation having
been had thereon,

It is hereby ORDERED, That the order so appealed from be,
and the same hereby is unanimously affirmed without costs.

Entered: September 29, 1978

MARY F. ZOLLER, Clerk

*APPENDIX — Five Orders of the Appellate Division,
Fourth Department.*

**SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department**

**PRESENT: MARSH, P.J., CARDAMONE, SIMONS
DILLON, SCHNEPP, JJ.**

John R. Quinzio, Appellant,

v.

Mr. and Mrs. John DePasquale, Respondents,
Town of Clay, et al., Defendants.

Appeal No. 3.

The above named John R. Quinzio, plaintiff in this action,
having appealed to this Court from an order of the Supreme
Court, entered in the Onondaga County Clerk's office on Octo-
ber 8, 1976 and said appeal having been argued by John
Quinzio appellant, and submitted by Thomas Meyer of counsel
for respondents, and due deliberation having been had thereon,

It is hereby ORDERED, That the order so appealed from be,
and the same hereby is unanimously affirmed without costs.

Entered: September 29, 1978

MARY F. ZOLLER,